INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	4
Summary of argument	5
Argument	8
Conclusion	21
Appendix (Statutes and regulations involved)	22

CITATIONS

Cases:

American La Dentelle, Inc. v. *Commissioner*, 1 B.T.A. 575	10
American Paper Exports v. *Bowers*, 54 F. (2d) 508	10
Arnold Constable Corp. v. *Commissioner*, 26 B.T.A. 1427, reversed, 69 F. (2d) 788	7, 10, 20
Atlantic Cleaners & Dyers, Inc. v. *United States*, 286 U.S. 427	11
Beneficial Loan Soc. v. *United States*, 48 F. (2d) 686, certiorari denied, 284 U.S. 633	7, 19
Beneficial Loan Society v. *Commissioner*, 70 F. (2d) 288	20
Boggs-Rice Co., In re, 66 F. (2d) 855	13
Burnet v. *Chicago Portrait Co.*, 285 U.S. 1	13
Caminetti v. *United States*, 242 U.S. 470	13
Carroll Chain Co. v. *Commissioner*, 1 B.T.A. 38, affirmed, 8 F. (2d) 529	14
Chess & Wymond Co. v. *Lucas*, 33 F. (2d) 793	16
Commissioner of Immigration v. *Gottlieb*, 265 U.S. 310	12
Commissioner v. *Riley Stoker Corp.*, 67 F. (2d) 688	16
Corrugated Bar Co., Inc. v. *Gage*, 58 F. (2d) 360	16
Dalton v. *Bowers*, 287 U.S. 404	8
De Haven Mfg. Co. v. *United States*, 31 F. (2d) 999	16
Dorsey Drug Co. v. *Commissioner*, 7 B.T.A. 229	15
Durabilt Steel Locker Co. v. *Commissioner*, 5 B.T.A. 239	14
Edwards v. *Douglas*, 269 U.S. 204	13
Flint v. *Stone Tracy Co.*, 220 U.S. 107	12
General Box Corp. v. *Commissioner*, 22 B.T.A. 725	15
Green River Distilling Co. v. *Commissioner*, 16 B.T.A. 395	10
Joseph & Feiss Co. v. *Commissioner*, 26 B.T.A. 1424, reversed, 70 F. (2d) 804	7, 10, 20

81869—34——1

Cases—Continued. Page

Lewellyn v. *Harbison*, 31 F. (2d) 740, certiorari denied, 280 U.S. 560 11
Ozawa v. *United States*, 260 U.S. 178 12
Pampanga Mills v. *Trinidad*, 279 U.S. 211 11
Pennsylvania Chocolate Co. v. *Lewellyn*, 27 F. (2d) 762 16
Sterling Oil & Gas Co. v. *Lucas*, 51 F. (2d) 413 16
Stimpson Computing Scale Co. v. *Lucas*, 39 F. (2d) 473 16
Tacoma Grocery Co. v. *Commissioner*, 1 B.T.A. 1062 ..... 15, 17
Turners Falls Power & Electric Co. v. *Commissioner*, 9 B.T.A. 435 15
United States v. *Brunett*, 53 F. (2d) 219 11
United States v. *Hartwell*, 6 Wall. 385 13
United States v. *Hoffman*, 61 F. (2d) 294 16
United States v. *Shreveport Grain & El. Co.*, 287 U.S. 77 13
Walker & Co., Arthur, v. *Commissioner*, 4 B.T.A. 151 ..... 15, 17
Weissberger Moving & Storage Co. v. *Commissioner*, 26 B.T.A. 1375 10
Wishnick-Tumpeer, Inc., v. *Commissioner*, Vol. I, Prentice-Hall, 1934, p. 975 ..... 7, 10, 20
Woolford Realty Co. v. *Rose*, 286 U.S. 319 8
Wright & Kremers, Inc. v. *United States*, 3 F. Supp. 616 16

Statutes:
Revenue Act of 1918, c. 18, 40 Stat. 1057:
Sec. 200 13
Sec. 204 13
Revenue Act of 1921, c. 136, 42 Stat. 227:
Sec. 200 14
Sec. 204 14
Revenue Act of 1924, c. 234, 43 Stat. 253, Sec. 200 (U.S.C., Title 26, Sec. 931) 16
Revenue Act of 1926, c. 27, 44 Stat. 9:
Sec. 200 (U.S.C.App., Title 26, Sec. 931) 22
Sec. 206 (U.S.C.App., Title 26, Sec. 937) 22
Sec. 226 (U.S.C.App., Title 26, Sec. 968) 23
Sec. 239 (U.S.C. App., Title 26, Sec. 991) 10
Sec. 240 (U.S.C.App., Title 26, Sec. 993) 23
Sec. 286 (U.S.C.App., Title 26, Sec. 941) 22

Miscellaneous:
H.Rep. 179, 68th Cong., 1st sess., p. 10 16
Treasury Regulations 69, promulgated under the Revenue Act of 1926:
Art. 634 24
Art. 1523 24

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 12

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

MORGAN'S, INCORPORATED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 9–11) is unreported. The opinion of the Circuit Court of Appeals for the First Circuit (R. 23–29) is reported in 68 F. (2d) 325.

JURISDICTION

The judgment below was entered December 15, 1933 (R. 29). On February 24, 1934, Mr. Justice Brandeis entered an order extending the time for the filing of a petition for a writ of certiorari for

sixty days from March 15, 1934 (R. 29). The petition for a writ of certiorari was filed March 29, 1934, and was granted April 30, 1934 (R. 30). Jurisdiction is conferred upon this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where two pre-existing corporations became affiliated during a normal taxable year of twelve months and thereafter filed a consolidated return for the period of affiliation, did such action divide the twelve-months' period into two "taxable years" for the purpose of applying the net loss provisions of Section 206 of the Revenue Act of 1926?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra,* pp. 22–25.

STATEMENT

The facts found by the Board of Tax Appeals (R. 10) may be summarized as follows:

Morgan's, Incorporated, and Haines Furniture Company are Massachusetts corporations, organized prior to 1925. On June 1, 1925, Morgan's, Incorporated, acquired all of the outstanding voting stock of Haines Furniture Company, and thereafter the two companies filed a consolidated return for the full calendar year 1925, reporting the net income of Morgan's Incorporated, and the net loss

of the Haines Furniture Company for the full calendar year.

During the years 1925, 1926, and 1927 Morgan's, Incorporated, had net incomes of $203,527.24, $142,900.94, and $182,932.12, respectively. For the periods January 1, 1925, to May 31, 1925; June 1, 1925, to December 31, 1925; and the year 1926 the Haines Furniture Company had net losses of $59,239.56, $61,626.69, and $2,551.76. During the year 1927 it had a net income of $63,188.34. On March 14, 1928, the Haines Furniture Company, pursuant to the applicable regulations, filed a separate return for the period January 1 to May 31, 1925, showing its net loss of $59,239.56. Its net loss of $61,626.69 for the balance of the year 1925 was included in the consolidated return and used as a deduction from the net income of Morgan's, Incorporated, for that period. Similarly the net loss of Haines Furniture Company for 1926 was included in the consolidated return filed for 1926 and used to reduce the net income of Morgan's, Incorporated, for that year. In the consolidated return for 1927 the Haines Furniture Company sought to bring forward its net loss of $59,239.56 sustained during the period January 1 to May 31, 1925, and deduct this sum from its $63,188.34 net income for 1927.

The Commissioner disallowed the deduction and determined a deficiency accordingly. Appeal was taken to the Board of Tax Appeals, which held that

by reason of the affiliation on June 1, 1925, and the filing of a consolidated return for the remainder of the year, the calendar year was divided into two taxable years within the meaning of Sections 200 and 206 of the Revenue Act of 1926, and therefore the year 1926 constituted the second and last taxable year to which the loss for the first part of 1925 could be carried (R. 11). On petition for review, the Circuit Court of Appeals for the First Circuit held that the calendar year 1925 was not divided into two taxable years, and accordingly reversed the decision of the Board of Tax Appeals. This Court granted certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the First Circuit erred—

(1) In holding that the definition of the term "taxable year" as found in Section 200 of the Revenue Act of 1926 applies to the term "taxable year" as used in the first part of the sentence constituting Section 206 (b), but not to the same term as twice used in the latter part of the same sentence.

(2) In holding that the calendar year 1925 was not divided into, and did not consist of, two "taxable years" for the purpose of applying the net loss provisions of Section 206 to the computation of the net income of the Haines Furniture Company for the year 1927.

(3) In reversing the decision of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

Section 206 (b) of the Revenue Act of 1926 (*infra*, p. 22) provides that a net loss sustained for any "taxable year" shall be allowed as a deduction in computing the net income of the taxpayer for the succeeding "taxable year", and that if the net loss exceeds the net income for such year the excess may be deducted in the next succeeding "taxable year." The term "taxable year" is defined in Section 200 (*infra*, p. 22) as including a fractional part of a year for which a return is made under the statute or under regulations duly promulgated.

The Haines Furniture Company became affiliated with Morgan's, Inc., on June 1, 1925. Under Article 634 of Regulations 69 (*infra*, p. 24) the Haines Furniture Company was required to file a separate return of its income for the five months of 1925 preceding the affiliation, and it did file such a return in 1928. The period January 1 to May 31, 1925, was therefore a "taxable year" within the plain meaning of Sections 200 and 206 (b), and the company was clearly entitled to, and did, compute a net loss for that period. Similarly, the period June 1 to December 1, 1925, was a "taxable year" and was the "succeeding taxable year" within the meaning of the statute. It follows that the calendar year 1926 was the "next succeeding taxable year", and the last year in which the net loss sustained in the first five months of 1925 could be deducted. The Board of Tax Appeals so held, and we submit its decision was correct.

The court below held, in effect, that although the definition of "taxable year" in Section 200 applies to those words as used in Section 206 (b) to specify the period for which a net loss may be computed, it does not apply to them as used twice again in the same section to designate the periods in which a net loss may be deducted from income. We submit that in so holding the court violated an elementary principle of statutory construction, namely, the principle that a word used several times in the same section of a statute will be regarded as having the same meaning each time. Congress did not limit the application of its definition of "taxable year", and we think there is no justification for refusing to apply that definition uniformly throughout the section here involved.

The decision below was based on inferences drawn from the legislative history of Section 200. But extrinsic aids to interpretation may not be invoked when the statute is as unambiguous as it is here. Moreover, the committee report to which the court referred is far from clear and does not warrant the inference which the court drew from it regarding the intent of Congress. True, the report indicates that the amendment to Section 200, including in the definition of "taxable year" a fractional part of a year for which a return is filed, was intended primarily to benefit taxpayers. It does not, however, specify in what respect taxpayers were to be benefited. The Commissioner's interpretation of

the law as it existed prior to the amendment prevented a taxpayer from deducting a net loss from the income of a fractional part of a year, and we think there is as much reason to regard the amendment as designed to change the law in that respect as there is for giving it the limited effect ascribed to it by the court below. Had Congress not desired the definition of "taxable year" to be generally applicable, presumably it would have so stated.

The question decided by the Court of Claims in *Beneficial Loan Society* v. *United States,* 48 F. (2d) 686, certiorari denied, 284 U.S. 633, is not analogous to the question involved here. That case had to do with prorating the specific credit allowed by Section 236 of the 1926 Act, and the definition of "taxable year" in Section 200 was not considered. We submit that the decision there has no direct bearing on the present problem.

The decision below has been followed in *Arnold Constable Corp.* v. *Commissioner,* 69 F. (2d) 788 (C.C.A. 2d), and *Joseph & Feiss Co.* v. *Commissioner,* 70 F. (2d) 804 (C.C.A. 6th), but we think those cases were erroneously decided for the reasons stated in this brief. The same question was decided in the Government's favor in *Wishnick-Tumpeer, Inc.,* v. *Commissioner* (App.D.C.), decided March 12, 1934, not yet officially reported, but found in Vol. I, Prentice-Hall, 1934, p. 975.

81809—34——2

ARGUMENT

The right of Haines Furniture Company to deduct in 1927 a loss sustained by it during the period January 1 to May 31, 1925, must be found in a specific provision of the statute or it does not exist. *Woolford Realty Co.* v. *Rose,* 286 U.S. 319, 326; *Dalton* v. *Bowers,* 287 U.S. 404, 409. The only statute to which respondents may point is Section 206 (b) of the Revenue Act of 1926 (*infra,* p. 22). That section provides:

> If, for any *taxable year,* it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount thereof shall be allowed as a deduction in computing the net income of the taxpayer for the succeeding *taxable year* (hereinafter in this section called "second year"), and if such net loss is in excess of such net income (computed without such deduction), the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding *taxable year* (hereinafter in this section called "third year"); * * *. (Italics supplied.)

The term "taxable year" is specifically defined by Section 200 (*infra,* p. 22) as follows:

> The term "taxable year" includes, *in the case of a return made for a fractional part of a year* under the provisions of this title or *under regulations prescribed by the Com-*

> *missioner with the approval of the Secretary, the period for which such return is made.* * * * (Italics supplied.)

Article 634 of Regulations 69 (*infra*, p. 24), promulgated under this section, provides that—

> (b) where corporations are not affiliated at the beginning of the taxable year but through change of stock ownership during the year become affiliated, a full disclosure of the circumstances of such changes of stock ownership shall be submitted to the Commissioner.
>
> Ordinarily in such cases, where only two corporations are involved * * * under the conditions described in (b) above, each *corporation should file a separate return from the beginning of the taxable period to the date of the change in stock ownership, and a consolidated return should be filed by the parent or principal corporation from the date of change of stock ownership to the end of the taxable year,* including therein the income of the subsidiary or subordinate corporation for such period. (Italics supplied.)

Here the two corporations were not affiliated at the beginning of the year, but through a change of stock ownership became affiliated on June 1, 1925. They filed a consolidated return for the entire year, but later the Haines Furniture Company, in compliance with Article 634, *supra*, filed a separate

return for the period January 1 to May 31, 1925.[1] Thus the Haines Furniture Company was required to, and it did, file a separate return for the period January 1 to May 31, 1925, and the two companies filed a consolidated return for the period June 1 to December 31, 1925. Accordingly, the Haines Furniture Company's calendar year 1925 was divided into two "taxable years" under the plain provisions of Section 200.[2] *Wishnick-Tumpeer, Inc.*, v. *Commissioner, supra.* The Board of Tax Appeals therefore held that the calendar year 1926 became the "third taxable year" within the meaning of Section 206 for the purpose of applying the January 1 to May 31, 1925, net loss, and consequently that such loss could not be carried forward to the taxable year 1927.

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[1] The Board of Tax Appeals has uniformly held that the filing of such a separate return was required (*American LaDentelle, Inc.*, v. *Commissioner*, 1 B.T.A. 575; *Grand River Distilling Co.* v. *Commissioner*, 16 B.T.A. 395; *Weissberger Moving & Storage Co.* v. *Commissioner*, 26 B.T.A. 1375; *Joseph & Feiss Co.* v. *Commissioner*, 26 B.T.A. 1424, reversed, 70 F. (2d) 804 (C.C.A. 6th); *Arnold Constable Corp.* v. *Commissioner*, 26 B.T.A. 1427, reversed, 69 F. (2d) 788 (C.C.A. 2d), now pending on petition for rehearing), and such has been the view of the courts which have had occasion to consider the question (*Wishnick-Tumpeer, Inc.*, v. *Commissioner, supra; American Paper Exports* v. *Bowers*, 54 F. (2d) 508, 509 (C.C.A. 2d)).

[2] This conclusion is also fortified by the provisions of Section 226 (b), *infra*, p. 23 (made applicable to corporations by Section 239 (U.S.C. App., Title 26, Sec. 991)), and by Article 1523 of Regulations 69 (*infra*, p. 25).

The court below, however, held that the term "taxable year", as used in the first part of the sentence constituting Section 206 (b), means any period of less than twelve months for which a return is required to be made by the regulations; but that the same phrase, as used twice again in the same sentence, means a full period of twelve months only. We submit that in so holding the court clearly violated the most elementary principles of statutory construction.

It is well settled that when the same word or phrase is used in the same section of an Act more than once and the meaning is clear as used in one place, it will normally be construed to have the same meaning in the next place. *Lewellyn* v. *Harbison,* 31 F. (2d) 740, 742 (C.C.A. 3d), certiorari denied, 280 U.S. 560. See, also, *Pampanga Mills* v. *Trinidad,* 279 U.S. 211, 218; *United States* v. *Brunett,* 53 F. (2d) 219, 234 (W.D.Mo.). Compare *Atlantic Cleaners & Dyers, Inc.,* v. *United States,* 286 U.S. 427. If such rule applies where the same word or phrase is used in the same section more than once, it necessarily applies with greater force where the word or phrase is used more than once in the same sentence. In fact, it is improbable that Congress would use the identical phrase in different senses in penning a single sentence, and there is no evidence that it did here. With meticulous care it defined the meaning of the term "taxable year" as including—

> in the case of a return made for a fractional part of a year under the provisions of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made. * * *

Upon that definition it placed no limitation. That such definition applies to the term "taxable year" as used in the first part of the sentence constituting Section 206 (b) is conceded, and we submit that it should be construed to have the same meaning as thereafter used in the same sentence. By giving effect to the plain meaning of the language used by Congress, the statute is rendered unambiguous, and it is the duty of the courts to give effect to unambiguous statutory provisions. *Ozawa* v. *United States,* 260 U.S. 178, 194; *Commissioner of Immigration* v. *Gottlieb,* 265 U.S. 310, 313.

In attributing to the phrase "taxable year", as used for the second and third times in Section 206 (b), a different meaning from the same phrase as used in the first part of the sentence, it is clear that the court below sought to give effect to what it thought the statute should provide. This is beyond the power of a court. *Flint* v. *Stone Tracy Co.,* 220 U.S. 107, 173–174.

To support its position the court below relied upon inferences drawn from the legislative history of Section 200 (R. 26–27). While legislative history is sometimes helpful in the construction of a

doubtful statute, it is well settled that such aid to interpretation, like all others, may be resorted to only for the purpose of resolving an ambiguity, not for the purpose of creating one. *United States* v. *Shreveport Grain & El. Co.*, 287 U.S. 77, 83; *Edwards* v. *Douglas*, 269 U.S. 204, 211; *Caminetti* v. *United States*, 242 U.S. 470, 485; *In re Boggs-Rice Co.*, 66 F. (2d) 855, 858 (C.C.A. 4th). Where the language of a statute is clear, it is conclusive, and there can be no construction where there is nothing to construe. *United States* v. *Hartwell*, 6 Wall. 385, 396; *United States* v. *Shreveport Grain & El. Co., supra*, p. 83.

In the instant case the statute is as clear as it could possibly be made and we therefore submit that it does not admit of the use of extrinsic aids to interpretation. Furthermore, the intent of Congress, as gathered from the legislative history, is less clear than the statute, and it is certainly delusive to attempt to construe a statute couched in plain terms by reference to ambiguous legislative history. See *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 16.

Sections 200 and 206 had their origin in Sections 200 and 204, respectively, of the Revenue Act of 1918, c. 18, 40 Stat. 1057. Section 204 (b) of that Act provided that if "for any taxable year" a taxpayer sustained a net loss the amount thereof could be deducted from such taxpayer's net income for the preceding "taxable year" and the unab-

sorbed balance, if any, could be carried forward and used as a deduction in computing such taxpayer's net income for the succeeding "taxable year." Section 200 defined the term "taxable year" as "the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232."

The provisions of Sections 200 and 204 (b) of the Revenue Act of 1918 were reenacted in Sections 200 and 204 (b) of the Revenue Act of 1921, c. 136, 42 Stat. 227, without change, except that net losses were allowed to be carried forward two taxable years instead of back one taxable year and forward one taxable year, as in the 1918 Act. In applying the provisions of these Acts the Commissioner of Internal Revenue took the position that a period of less than twelve months did not constitute a taxable year for any purpose having to do with net losses, and the Board of Tax Appeals sustained him in most cases, except when the fractional period was the taxpayer's first or last accounting period, immediately following organization or immediately preceding dissolution. See *Carroll Chain Co.* v. *Commissioner,* 1 B.T.A. 38, affirmed, *sub. nom. United States* v. *Carroll Chain Co.,* 8 F. (2d) 529 (S.D. Ohio); *Durabilt Steel Locker Co.* v. *Commissioner,* 5 B.T.A. 239. Thus it was held, in accordance with the Commissioner's contentions, that a net loss computed for a period of less than

twelve months was not a statutory net loss which could be deducted from income in a succeeding year. *Tacoma Grocery Co.* v. *Commissioner,* 1 B.T.A. 1062; *Dorsey Drug Co.* v. *Commissioner,* 7 B.T.A. 229; *Turners Falls Power & Electric Co.* v. *Commissioner,* 9 B.T.A. 435. And it was likewise held that a net loss sustained in one year could not be deducted from the income of a succeeding period of less than twelve months. *Arthur Walker & Co.* v. *Commissioner,* 4 B.T.A. 151;[3] *General Box Corp.* v. *Commissioner,* 22 B.T.A. 725, 728. The majority of the cases involved voluntary changes in accounting periods, with the fractional portion of the year falling between the end of the old accounting period and the beginning of the new. The same principles were, however, held applicable in cases like the instant case, where the fractional period resulted from affiliation during the course of a year. See *General Box Corp.* v. *Commissioner, supra,* p. 729.

While none of the cases cited in the preceding paragraph were decided until after the passage of the 1924 Act, all of them involved prior Revenue Acts and are illustrative of the position taken by

[3] In this case the Board said (p. 155): "The net loss provision of the 1921 Act is confined in its operation to offsetting a net loss of one year against the income of the succeeding year, and no provision is made for offsetting the loss of one year against the income of only a portion of the succeeding year."

the administrative officials under those Acts.[4] Evidently the Committee on Ways and Means of the House was advised of the difficulties that were being experienced in applying the net-loss provisions to fractional periods, for when it was considering H.R. 6715, which later became the Revenue Act of 1924, c. 234, 43 Stat. 253, it proposed an addition to Section 200 (U.S.C., Title 26, Sec. 931) as follows:

> The term "taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

With respect to this addition the Committee said (H.Rep. No. 179, 68th Cong., 1st Sess., p. 10):

> Section 200:
>
> (1) In subdivision (a) of this section the term "taxable year" is defined to include a

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[4] Since we are concerned only with the historical background of the amendment to the definition of "taxable year" in Section 200 of the Revenue Act of 1924, it seems unnecessary to consider in detail the court decisions under the earlier Acts. See, however, *De Haven Mfg. Co.* v. *United States*, 31 F. (2d) 999 (E.D.N.Y.); *Chess & Wymond Co.* v. *Lucas*, 33 F. (2d) 793 (W.D.Ky.); *Stimpson Computing Scale Co.* v. *Lucas*, 39 F. (2d) 473 (W.D.Ky.); *Pennsylvania Chocolate Co.* v. *Lewellyn*, 27 F. (2d) 762 (W.D.Pa.); *Sterling Oil & Gas Co. v. Lucas*, 51 F. (2d) 413 (W.D.Ky.); *Corrugated Bar Co., Inc.*, v. *Gage*, 58 F. (2d) 360 (W.D.N.Y.); *United States* v. *Hoffman*, 61 F. (2d) 294 (C.C.A. 8th); *Commissioner* v. *Riley Stoker Corp.*, 67 F. (2d) 688 (C.C.A. 1st); *Wright & Kremers, Inc.*, v. *United States*, 3 F. Supp. 616 (C.Cls.).

> period of less than a year *when a return is made for such period.* Under the existing law the use of the term "taxable year" in the "net loss" section and other sections *has been construed not to cover the case of a return made by a taxpayer for a fractional part of a year, with the result that the benefits of such sections are denied to taxpayers who are required by law to make a return for a fractional part of a year.* (Italics ours.)

While it thus appears that the Committee was primarily motivated by a desire to relieve taxpayers, it does not appear that such was its sole motive. Furthermore, it is to be remembered that the law as it then existed worked hardship upon taxpayers in at least two respects: not only did it deny them the privilege of treating a "net loss" computed for a period of less than twelve months as a statutory net loss (*Tacoma Grocery Co.* v. *Commissioner, supra*), but, as construed by the Commissioner and the Board of Tax Appeals, it precluded them from deducting from the income of a fractional period a net loss sustained during the preceding taxable year—a privilege which taxpayers in some instances desired (*Arthur Walker & Co.* v. *Commissioner, supra*). It is just as probable, therefore, that the Committee had in mind cases like the *Arthur Walker & Co.* case, and intended to permit taxpayers to deduct net losses from the income of fractional periods, as that it intended the amendment to apply to situations like that presented in the *Tacoma Grocery Co.* case.

Consequently, we submit, there is just as much reason for saying that Congress intended the amended definition of "taxable year" to apply to that phrase as used for the second and third times in Section 206 (b) as there is for applying it to the phrase as used for the first time in that section. Certainly Congress must have been sufficiently familiar with the provisions of Section 206 (b) to know what the effect of the proposed amendment to Section 200 would be upon the phrase "taxable year" as used three times in the later section. In the absence of some more definite showing, at least, it must be assumed that Congress was cognizant of the effect of what it was doing, and that had it not desired the amendment to apply equally to the words "taxable year" each time they appeared in the same section it would have made its position clear.

The best that can be said for the opinion of the court below is that it held that a vague and indefinite Committee report clarified a perfectly clear and unambiguous statute so as to make it mean something other than that which it plainly states. We submit that there is no justification for such judicial legislation.

The court below thought it significant that under the regulations a return for a fractional part of a year was not due to be filed until March 15th of the following year (R. 25). It is difficult to perceive wherein such a regulation could have any bearing

upon the question here involved, particularly in view of the provision of Section 226 (b) of the Revenue Act of 1926, which states:

> Where a separate return is so made, *and in all other cases where a separate return is required or permitted,* by regulations prescribed by the Commissioner with the approval of the Secretary, *to be made for a fractional part of a year,* then the income *shall be computed on the basis of the period for which separate return is made.* (Italics supplied.)

It would seem that in determining that which constitutes a *taxable year* it is far more important to ascertain *the period prescribed for tax computation* than the time for *filing a return.* Logically, the period prescribed for *tax computation* should be called a "taxable year" (see Article 1523, Regulations 69, *infra,* p. 25), while the time for filing a return has no significance whatever.

The lower court seems to have thought that the question here presented was analogous to that decided by the Court of Claims in *Beneficial Loan Society* v. *United States,* 48 F. (2d) 686, certiorari denied, 284 U.S. 633. That case had to do with the question of prorating the $2,000 specific credit allowed by Section 236 of the Revenue Act of 1926 (U.S.C.App., Title 26, Sec. 988). The definition of "taxable year" contained in Section 200 was not involved, and the court did not discuss it. Section 226 (e) expressly provided that if a return was

made for a fractional part of a year, the specific credit should be prorated, and the Court of Claims did nothing more than give effect to that statute. That case is similar to *Beneficial Loan Society* v. *Commissioner,* 70 F. (2d) 288 (App.D.C.), and we submit that neither has any direct bearing upon the instant case. Cf. *Wishnick-Tumpeer, Inc.,* v. *Commissioner, supra.*

In the latter case, the Court of Appeals of the District of Columbia had before it the identical question here presented, although arising under the Revenue Act of 1928. In supporting the views urged by the petitioner here, the court there said:

> By both statute and regulations * * * the taxable year is defined to be the period for which a return is filed, though only a fractional part of the year. The language is plain, and there is no need for resort to any other source to discover its meaning. The argument of Tumpeer would require us to reject the ordinary rule of interpretation and to say that the words used should be given no effect, because to do so would defeat the obvious purpose of Congress to permit net losses to be spread over a full three year period. This we do not feel we may properly do.

The Circuit Court of Appeals for the Second Circuit, in *Arnold, Constable Corp.* v. *Commissioner,* 69 F. (2d) 788, and the Circuit Court of Appeals for the Sixth Circuit, in *Joseph & Feiss Co.* v. *Commissioner,* 70 F. (2d) 804, have followed

the decision below. However, we believe that those decisions, like the decision in this case, clearly distort the plain provisions of the statute and are erroneous.

CONCLUSION

We submit that the decision of the court below is erroneous and should, therefore, be reversed.

Respectfully submitted.

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SEPTEMBER 1934.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1926,[5] c. 27, 44 Stat. 9:

> SEC. 200. When used in this title—
>
> (*a*) The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or 232. The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. The term "taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made. The first taxable year, to be called the taxable year 1925, shall be the calendar year 1925 or any fiscal year ending during the calendar year 1925. (U.S.C.App., Title 26, Sec. 931.)
>
> * * * * *
>
> SEC. 206. * * * (*b*) If, for any taxable year, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount thereof shall be allowed as a deduction in computing the net income of the taxpayer for the succeeding taxable year

[5] Effective as of Jan. 1, 1925; see Section 286 of the Revenue Act of 1926 (U.S.C.App., Title 26, Sec. 941).

(hereinafter in this section called "second year"), and if such net loss is in excess of such net income (computed without such deduction), the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year (hereinafter in this section called "third year"); the deduction in all cases to be made under regulations prescribed by the Commissioner with the approval of the Secretary.

(U.S.C.App., Title 26, Sec. 937.)

* * * * *

SEC. 226. * * * (*b*) Where a separate return is so made, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(U.S.C.App., Title 26, Sec. 968.)

* * * * *

SEC. 240. (*a*) Corporations which are affiliated within the meaning of this section may, for any taxable year, make separate returns or, under regulations prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income for the purpose of this title, in which case the taxes thereunder shall be computed and determined upon the basis of such return. If return is made on either of such bases, all returns thereafter made shall be upon the same basis unless permission to change the basis is granted by the Commissioner.

(*b*) In any case in which a tax is assessed upon the basis of a consolidated return, the

total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement, then on the basis of the net income properly assignable to each. There shall be allowed in computing the income tax only one specific credit computed as provided in subdivision (b) of section 236.

(U.S.C. App., Title 26, Sec. 993.)

Treasury Regulations 69, promulgated under the Revenue Act of 1926:

ART. 634. *Change in ownership during taxable year.*—(*a*) Where corporations are affiliated at the beginning of a taxable year but due to a change in stock ownership during the year the affiliated status is terminated, or (b) where corporations are not affiliated at the beginning of the taxable year but through change of stock ownership during the year become affiliated, a full disclosure of the circumstances of such changes of stock ownership shall be submitted to the Commissioner.

Ordinarily in such cases, where only two corporations are involved, the parent or principal corporation, under the conditions described in (*a*) above, should file a consolidated return including the income of such subsidiary or subordinate corporation to the date of the change of stock ownership, and each should file a separate return from the date of such change in stock ownership to the end of the taxable period, and, under the conditions described in (*b*) above, each corporation should file a separate return from the beginning of the taxable period to the date of the change in stock ownership, and a

consolidated return should be filed by the parent or principal corporation from the date of change of stock ownership to the end of the taxable year, including therein the income of the subsidiary or subordinate corporation for such period.

* * * * *

Where, in accordance with the procedure set forth above, a return is made by a corporation for a period less than a year, the tax shall be computed in accordance with sections 226 and 239 and the articles thereunder. Where corporations become affiliated during the taxable year the separate returns of the corporations for the portion of the taxable year during which they were not affiliated will not be due until the fifteenth day of the third month following the close of the taxable year. * * *

ART. 1523. *"Taxable year", "withholding agent", "paid or incurred", and "paid or accrued."*—The taxable year is the time unit for the purpose of the tax. The term includes, in the case of a return made for a fractional part of a year under these regulations, the period for which the return is made. (See section 212 and article 22.) * * *

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